TOWN OF BUENA VISTA, COLORADO
ORDINANCE NO. 10
(SERIES OF 2010)

AN ORDINANCE OF THE TOWN OF BUENA VISTA, COLORADO, DECLARING A TEMPORARY MORATORIUM ON THE USE OF PROPERTY LOCATED WITHIN THE TOWN FOR ADULT BUSINESSES PENDING ADOPTION OF APPROPRIATE ZONING AND LICENSING REGULATIONS

WHEREAS, the Board of Trustees for the Town of Buena Vista, Colorado (the "Town") desires to protect and preserve the health, safety and welfare of its citizens as well as the patrons of Adult Businesses, as defined below, through the implementation of a comprehensive ordinance regulating Adult Businesses; and

WHEREAS, the Town Board finds that the proliferation of unregulated Adult Businesses historically and regularly results in an increase in criminal activity such as prostitution, narcotic and liquor law violations, violent crimes against persons and property crimes; and

WHEREAS, unregulated Adult Businesses have a deleterious effect on neighboring residential and commercial areas causing an increase in crime, deterioration in the quality of life, overburdening of Town services and a decrease in property values thereby contributing to environmental blight and the erosion of the financial health and well-being of the Town; and

WHEREAS, the Town Board finds that currently there are no new Adult Businesses seeking application for (i) Town services such as water taps; (ii) building, development or sign permits; or (iii) sales and use tax, liquor, or other business licenses; and

WHEREAS, the Town Board desires to avoid the suppression of speech activities protected by the First and Fourteenth Amendments of the U.S. Constitution and the Colorado Constitution while minimizing and controlling the aforementioned adverse effects so as to protect the health, safety and welfare of its citizens; preserve quality of life within the Town limits; preserve the property values and character of surrounding neighborhoods; deter the spread of environmental blight and protect citizens from increased crime; and

WHEREAS, the Town Board hereby determines that it is necessary to impose a moratorium of limited duration on Adult Businesses to protect and preserve the health, safety, welfare and economic well-being of the Town and its citizens while appropriate classifications and regulations are developed.

NOW, THEREFORE, BE IT ORDAINED BY THE TRUSTEES FOR THE TOWN OF BUENA VISTA, COLORADO, THAT:

Section 1. Definitions. As used herein the following words and phrases shall have the following meanings:

a) "Adult Arcade" means any commercial establishment to which the public is permitted or invited where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image or virtual reality producing machines, for viewing by five or fewer persons per machine at any one time, are used to regularly show films, motion pictures, video cassettes, slides, or other photographic reproductions simulating or depicting actual acts of masturbation, sexual intercourse, copulation, sodomy or displaying human genitals in a state of sexual stimulation, arousal, or tumescence, or depicting excretory functions as a part of or in connection with any of the activities set forth in this subsection.

b) "Adult Business' means an adult arcade, adult cabaret, adult motion picture theater, adult bookstore or adult video store, adult motel, adult theater, nude model studio or sexual encounter center.

c) "Adult Cabaret" means a nightclub, bar, restaurant, concert hail, auditorium, or other commercial establishment which regularly features live Adult Entertainment

d) "Adult Entertainment" means any exhibition, display, or dance which involves the exposure to view of any portion of the male breast below the top of the areola, male genitals, female genitals, or the pubic hair, anus, or cleft of the buttocks of any person or male genitals in a discernible turgid state even if completely and opaquely covered.

e) "Adult Motion Picture Theater" means any commercial establishment to winch the public is permitted or invited, where for any form of consideration, films, motion pictures, video cassettes, slides, or other photographic reproductions are regularly shown depicting actual acts of masturbation, sexual intercourse, oral copulation, sodomy or displaying human genitals in a state of sexual stimulation, arousal, or tumescence, or depicting excretory functions as a part of or in connection with any of the activities set forth in this subsection. Any establishment meeting the definition of an adult arcade is not an adult motion picture theater.

f) "Adult Bookstore" or "Adult Video Store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

1) Books, magazines, periodicals or other printed matter, or photographic, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe Specified Sexual

Activities or Specified Anatomical Areas; or

2) Instruments, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.

3) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing Specified Sexual Activities or Specified Anatomical Areas and still be categorized as an Adult Bookstore or Adult Video Store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an Adult Bookstore or Adult Video Store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe Specified Sexual Activities or Specified Anatomical Areas.

4) "Principal Business Purpose" means as to any establishment, having as a substantial or significant portion of its stock in trade the items listed in subparagraphs (1) and (2) above or having on the premises at least 25 square feet of display space occupied by the display of such items.

g) "Adult Motel" means a hotel, motel or similar commercial establishment that offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions.

h) "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

i) "Nude Model Studio" means any place where a person who appears in a state of nudity or displays Specified Anatomical Areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration other than persons engaged in bona fide educational endeavors.

j) "Specified Anatomical Areas" means the male genitals in a state of sexual arousal and/or vulva or more intimate parts of the female genitals.

k) "Specified Sexual Activities" means and includes any of the following:

1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

3) Masturbation, actual or simulated; or

4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

l) "Sexual Encounter Center" means a business or commercial enterprise that regularly offers for any form of consideration, a place where two or more persons may congregate, associate, or consort when one or more of the persons is in a state of nudity or semi-nudity. This definition does not apply to any treatment or examination of another person for a bona fide medical purpose when such treatment or examination is conducted in a manner substantially consistent with reasonable medical practices.

Section 2. Adult Business Use Temporarily Prohibited. The use of property located within the Town or any Adult Business use within the Town is hereby prohibited for a period of one hundred and twenty (120) days from the effective date of this Ordinance.

Section 3. Town Temporarily Prohibited from Providing Services to Adult Businesses. The Town shall not provide to any property located within the Town with actual or planned use as any Adult Business (i) Town services such as water taps; (ii) building, development or sign permits; or (iii) sales and use tax, liquor, or other business licenses at any time while this Ordinance or any extension hereof is in effect.

Section 4. Severability. Should any one or more Sections or provisions of this Ordinance be judicially determined to be invalid or unenforceable, such determination shall not affect, impair or invalidate the remaining Sections or provisions of this Ordinance.

Section 5. Emergency. The Town Board finds and concludes that this Ordinance is necessary for the immediate preservation of the peace, health, welfare, safety and economic wellbeing of the Town of Buena Vista and that the presence or proliferation of Adult Businesses in an uncontrolled or unregulated fashion constitutes an emergency because evidence exists that unregulated Adult Businesses may lead to increased crime, overburdening of Town services, disease, deterioration of quality of life and decreased property values, therefore, this ordinance shall be effective upon its approval and passage by the Town Board of the Town of Buena Vista.

APPROVED, by a vote of 6 to 0 this 13th day of April, 2010.

TOWN OF BUENA VISTA, COLORADO

By: Cara Russell

Cara Russell, Mayor

ATTEST:

Diane Spomer

Diane Spomer, Town Clerk

(SEAL)